

**Inmont Corporation, Automotive Division, OEM and Joseph J. Belanger.**

**Local 942, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Joseph J. Belanger.**  
Cases 7-CA-20241 and 7-CB-5387

29 February 1984

### DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND DENNIS

On 6 May 1983 Administrative Law Judge Donald R. Holley issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent Union filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent herewith.

The complaint alleges that Respondent Local 942, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), hereinafter referred to as Respondent Union, and Respondent Inmont Corporation, Automotive Division, OEM, hereinafter referred to as Respondent Employer, violated Section 8(b)(1)(A) and (2) and Section 8(a)(3) and (1) of the Act, respectively, by maintaining and enforcing a provision in their collective-bargaining agreement which grants superseniority for purposes of layoff and recall preference to certain of Respondent Union's officials. The complaint places in issue the grant of superseniority under article VII, section 6, to three trustees and the sergeant-at-arms. The judge found that Respondent Union's officers and officials named in the complaint "engage in significant in-plant activities which are directly related to the processing of grievances and to the administration of the collective-bargaining agreement," and recommended dismissing the complaint in its entirety, citing, inter alia, *Gulton Electro-Voice*, 266 NLRB 406 (1983). For the reasons stated below, we do not agree.

The facts are not in dispute. Since at least 1950, successive collective-bargaining agreements between the parties have contained provisions which accord superseniority to union officers and stewards in matters relating to layoffs and recalls. The

superseniority provision<sup>1</sup> provides, in pertinent part, that the Union's shop committeemen and officers "shall have plant-wide seniority (but not departmental or classification seniority) over all employees during their term of office for the purpose of the Layoff and Recall Procedure." Union officers covered under the superseniority provision include the following: the president, vice president, recording secretary, financial secretary, sergeant-at-arms, guide, three trustees, and the chief steward on the night shift. During the period of 25 January through 14 March 1982 Respondent Employer experienced layoffs in which the superseniority clause was invoked by the union trustees and the sergeant-at-arms. Specifically, the record shows that trustees Richard Phillips, William Martin, and Dennis Uzan and sergeant-at-arms Mark Howell each invoked the superseniority clause during the period of employee layoffs. The parties stipulated that, but for the fact that the three trustees and sergeant-at-arms invoked the contractual superseniority clause and thereby received preferential treatment, normal or real seniority would have caused the three trustees and the sergeant-at-arms to be laid off instead of employees Joseph Belanger, William Crawford, Ronald Klopfer, and Edward Litten.

As noted above, the judge recommended that the complaint be dismissed, finding that the Respondent's three trustees and sergeant-at-arms performed duties entitling them to exercise superseniority rights under the standards set forth in *Gulton Electro-Voice*, supra. In *Gulton*, the Board concluded that:

We will find unlawful those grants of superseniority extending beyond those employees responsible for grievance processing and on-the-job contract administration. We will find lawful only those superseniority provisions limited to employees who, as agents of the union, must be on the job to accomplish their duties directly related to administering the collective-bargaining agreement.<sup>2</sup>

<sup>1</sup> The full text of the applicable contract provision, art. VII, sec. 6 is as follows:

Shop Committeemen and Officers of Local No. 942, the total of both not to exceed thirteen (13) in number, provided they are employees of the Company, shall have plant-wide seniority (but not departmental or classification seniority) over all employees during their term of office for the purpose of the Layoff and Recall Procedure. In addition, each member of the Shop Committee and the Vice-President of Local No. 942 shall have day shift preference in any classification to which he might be assigned under the provisions of Article VII, Section 8, 9 or 10 during his term of office; and if he is not on the day shift, he shall displace the employee with the least seniority in his classification in his department on the day shift.

<sup>2</sup> *Gulton Electro-Voice*, supra at 409.

The judge examined all of the record evidence concerning the official duties and functions of the trustees and the sergeant-at-arms enunciated in the International Union's constitution and Respondent Union's bylaws and concluded that, standing alone, the performance of those functions would not justify a lawful grant of superseniority to the individuals occupying those positions.<sup>3</sup> No exceptions were filed to these findings; accordingly, we adopt them. However, the judge also examined the informal participation of the trustees and the sergeant-at-arms in the processing of grievances and administration of the contract and their participation in Respondent Union's executive board activities and concluded that the performance of these activities would justify a lawful grant of superseniority to the individuals occupying those positions. In reaching this conclusion, the judge found that the trustees and the sergeant-at-arms, individually or as members of the executive board, engage in the following "in plant" activities:<sup>4</sup> distribute and collect "speak up slips" in the solicitation of suggestions from the membership for contract proposals; render informal opinions on matters involving contract interpretation; meet twice each month, and on other occasions when the need arises, in a committee office located in the plant, to discuss and resolve problems arising within the plant, including employee discharges, safety matters, and situations

<sup>3</sup> Art. XI, secs. 12 and 13 of the International Union's constitution sets forth the duties and functions of Respondent Union's three trustees and sergeant-at-arms as follows:

#### Trustees

Section 12. The trustees shall have general supervision over all funds and property of the Local Union. They shall audit or cause to be audited by a Certified Public Accountant selected by the Local Union Executive Board, the records of the Financial Officers of the Local Union semiannually as provided herein, using duplicate forms provided by the International Union, a copy of which shall be forwarded to the International Secretary-Treasurer immediately thereafter. It shall also be their duty to see that the Financial Officers of the Local Union are bonded in conformity with the laws of the International Union. The Trustees shall see that all funds shall be deposited in a bank subject to an order signed by the President and Treasurer and/or Financial Secretary. In Local Unions where safety deposit boxes are used, the Trustees shall see that the signatures of the President, Treasurer and one (1) of the Trustees are required before admittance to the safety deposit box is permitted. In the event the books are not received for audit within fifteen (15) days after the end of each six-month period, the Chairperson of the Trustees shall make a report to the next meeting of the Local Union for action.

#### Sergeant-at-Arms

Section 13. It shall be the duty of the Sergeant-at-Arms to introduce all new members and visitors and assist the President in preserving order when called upon to do so. S/He shall also take charge of all property of the Local Union not otherwise provided for, and perform such other duties as may be assigned to her/him from time to time.

<sup>4</sup> The record indicates that Respondent Union, as a result of negotiations with Respondent Employer, maintains three offices located at Respondent Employer's Inmont facility.

involving the removal of stewards; fill in for bargaining committee members when the latter are out of the plant conducting negotiations; and decide by executive board vote whether fourth-step grievances should be taken to arbitration and decide by executive board vote whether to recommend that the membership ratify or reject final contract proposals. During the months of July, August, and September, when no regular membership meetings are conducted, the executive board conducts all the business at meetings held in the plant.

Contrary to the judge, we find that none of the duties performed by the trustees and the sergeant-at-arms, either individually or as members of the executive board, meets the standards set forth in *Gulton*. With respect to trustees' and sergeant-at-arms' "in plant" activities relied on by the judge in reaching his conclusions, we find that the evidence fails to establish that these activities constitute day-to-day administration of the collective-bargaining agreement or involve the exercise of "steward-like duties."<sup>5</sup> In this connection, we note that the trustees' and sergeant-at-arms' duties of distributing "speak up slips" in preparation for contract negotiations, engaging in contract interpretation, filling in for bargaining committee members, and voting on whether to recommend that the membership ratify or reject contract proposals involve functions that relate to internal union affairs, rather than steward-like duties that require the "immediacy of attention that stewards can offer."<sup>6</sup> Further, the trustees' and sergeant-at-arms' participation in the grievance procedure through voting on whether grievances which have reached the fourth step of the grievance procedure will be taken to arbitration does not involve on-the-job union duties or require the immediate attention of the officials. Moreover, *Gulton* requires for a grant of superseniority a showing that the employees invoking the superseniority clause "*must be on the job to accomplish their duties*."<sup>7</sup> It is apparent that, even though the trustees and sergeant-at-arms herein perform several "in plant" functions, those functions do not necessarily require that the officials also be "on the job" while performing them. The evidence fails to show that the officials' solicitation of suggestions, giving of advice, discussion of problems in the plant, or other duties related to their membership on the executive board are dependent on or affected by the officials' employment status.

Therefore, as none of the identified union officials meets the standards set forth in *Gulton*, we

<sup>5</sup> *Gulton Electro-Voice*, supra, 408.

<sup>6</sup> Ibid.

<sup>7</sup> Id. at 409.

find that the maintenance and enforcement of the collective-bargaining provision granting superseniority for the purpose of layoff protection and recall preference was unlawful insofar as it applied to Respondent Union's three trustees and sergeant-at-arms.<sup>8</sup> Accordingly, we find that, by the maintenance and enforcement of the superseniority clause with respect to the above-named officers and officials, Respondent Union and Respondent Employer have violated Section 8(b)(1)(A) and (2) and Section 8(a)(3) and (1) of the Act, respectively. We further find that, by according Richard Phillips, William Martin, Dennis Uzan, and Mark Howell superseniority under the unlawful clause to the detriment of other unit employees, Respondent Union and Respondent Employer further violated Section 8(b)(1)(A) and (2) and Section 8(a)(3) and (1) of the Act, respectively.

#### CONCLUSIONS OF LAW

1. The Respondent Employer, Inmont Corporation, Automotive Division, OEM is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent Union, Local 942, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing a seniority clause in their collective-bargaining agreement according Respondent Union's trustees and sergeant-at-arms superseniority, Respondent Union and Respondent Employer have engaged in, and are engaging in, unfair labor practices within the meaning of Sections 8(b)(1)(A) and (2) and 8(a)(1) and (3) of the Act, respectively. By discriminating against unit employees when Respondent Employer laid off or otherwise displaced employees who would not have been affected if the collective-bargaining agreement had not accorded the above-listed officers superseniority, the Respondents engaged in further violations of the foregoing sections of the Act.

4. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom and take

certain affirmative action designed to effectuate the policies of the Act.

We have found that the superseniority clause here in dispute is unlawful and we shall therefore order that Respondent Union cease and desist from maintaining and enforcing the clause in its bargaining agreement with Respondent Employer. We shall also order that Respondent Employer cease and desist from maintaining and enforcing the clause in its bargaining agreement with Respondent Union. We also have found that the unlawful superseniority provision was so applied as to lay off or displace affected unit employees who would not have been so affected but for the illegal discrimination depriving them of seniority. Consequently, we shall order that Respondent Employer offer to reinstate any employees who would not have been laid off or displaced from their jobs but for the unlawful assignment of superseniority to the sergeant-at-arms and trustees and that Respondents jointly and severally make affected unit employees whole for any loss of earnings they may have sustained as a result of the discrimination against them. We shall order that Respondent Employer expunge from its files any reference to the unlawful layoffs and displacements, and notify in writing the affected employees that this has been done and that the unlawful layoffs and displacements will not be used as a basis for future personnel actions against them. We shall further order that Respondent Union notify in writing both Respondent Employer and the affected employees that they do not object to the employees' reinstatement to the positions they held prior to the enforcement of the superseniority clause against them. Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Respondent Employer's backpay obligation shall run from the effective date of the discrimination against affected unit employees to the time it makes such recall offers, while Respondent Union's obligation shall run from such effective date to 5 days after the date of its notification to Respondent Employer that it has no objection to the recall of unit employees affected by the unlawful grant of superseniority to union officers.<sup>9</sup>

<sup>8</sup> See generally *Auto Workers Local 561 (Scoville)*, 266 NLRB 952 (1983).

<sup>9</sup> Chairman Dotson would not terminate Respondent Union's backpay liability as of 5 days after they notify Respondent Employer that they have no objection to the recall of those affected by the unlawful seniority provisions herein. After such notification, Chairman Dotson would continue to hold Respondent Union secondarily liable for any additional backpay amounts. See the dissent in *Claremont Resort Hotel*, 260 NLRB 1088 (1982), and cases cited therein.

Finally, we shall order that Respondent Employer cease and desist from in any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, and that Respondent Union likewise cease and desist from restraining or coercing employees they represent exercising those same rights.

### ORDER

The National Labor Relations Board orders that:

A. Respondent Employer, Inmont Corporation, Automotive Division, OEM, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing any clause in a collective-bargaining agreement with Respondent Union, Local 942, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), according the Union's sergeant-at-arms and trustees superseniority with respect to layoff and recall.

(b) Discriminating against any employees by laying them off or otherwise displacing them from their jobs instead of the Union's above-listed officers when such employees have greater seniority in terms of length of employment than has one of the aforementioned union officials.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Jointly and severally with Respondent Union make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, such earnings to be determined in the manner set forth in the section of this Decision entitled "The Remedy," and offer to reinstate any employees who would not have been laid off or otherwise displaced from their jobs but for the unlawful assignment of superseniority to the sergeant-at-arms and the trustees.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Expunge from its files any reference to the layoff or job displacement of any employees affected by the superseniority as applied to the Union's above-listed officers and notify them in writing that

this has been done and that evidence of the unlawful layoff or displacement will not be used as a basis for future personnel actions against them.

(d) Post at its Detroit, Michigan facility copies of the attached notice marked "Appendix A."<sup>10</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Employer's representative, shall be posted by Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as set forth in paragraph A,2, (d), above, as soon as forwarded by said Regional Director, copies of the attached notice marked "Appendix B."

(f) Mail signed copies of the attached notice marked "Appendix A" to the Regional Director for Region 7 for posting by Respondent Union.

(g) Notify the Regional Director in writing within 20 days from the date of this Order, what steps the Respondent Employer has taken to comply herewith.

B. Respondent Union Local 942, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), their officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining, enforcing, or otherwise giving effect to those clauses in their collective-bargaining agreement with Respondent Employer, Inmont Corporation, Automotive Division, OEM, according the Union's sergeant-at-arms and trustees superseniority with respect to layoff and recall.

(b) Causing or attempting to cause Respondent Employer to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing the employees of Respondent Employer in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Jointly and severally with Respondent Employer make any unit employees whole for any loss of earnings they may have suffered by reason of

<sup>10</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

the discrimination against them, such lost earnings to be determined in the manner set forth in the section of this decision entitled "The Remedy."

(b) Notify Respondent Employer and the affected employees in writing that they have no objection to reinstating the affected unit employees who but for the unlawful assignment of superseniority would not have been laid off or displaced from their jobs.

(c) Post at at their offices and meeting halls used by or frequented by their members and employees they represent at Respondent Employer's Detroit, Michigan facility copies of the attached notice marked "Appendix B."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Union's representative, shall be posted by Respondent Union immediately upon receipt and maintained by Respondent Union for 60 consecutive days in conspicuous places including all places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Post at the same places and under the same conditions as set forth in paragraph B,2(c), above, as soon as forwarded by said Regional Director, copies of the attached notice marked "Appendix A."

(e) Mail signed copies of the attached notice marked "Appendix B" to the Regional Director for Region 7 for posting by Respondent Employer.

(f) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent Union has taken to comply herewith.

<sup>11</sup> See fn. 10, above.

#### APPENDIX A

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT maintain and enforce any clause in our collective-bargaining agreement with Local 942, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), according the Union's sergeant-at-arms and trustees superseniority with respect to layoff and recall.

WE WILL NOT discriminate against any employees by laying them off or otherwise displacing them from their jobs instead of the Union's ser-

geant-at-arms and trustees when such employees do not in fact have greater seniority in terms of length of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer to the affected unit employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to those who were discriminatorily laid off or displaced from their jobs instead of the Local Union's above-listed officers and officials.

WE WILL expunge from our files any references to the layoff or displacement of any employee affected by the superseniority clause as applied to the Union's above-listed officers, and WE WILL notify them in writing that this has been done and that evidence of the unlawful layoff or displacement will not be used as a basis for future personnel actions against them.

WE WILL jointly and severally with the Union make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, with interest.

INMONT CORPORATION, AUTOMOTIVE  
DIVISION, OEM

#### APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

WE WILL NOT maintain and enforce any clause in our collective-bargaining agreement or supplements thereto with Inmont Corporation, Automotive Division, OEM, according to financial sergeant-at-arms and trustees superseniority with respect to layoff and recall.

WE WILL NOT cause or attempt to cause Inmont Corporation, Automotive Division, OEM to discriminate against any employees by requiring that the collective-bargaining agreement be enforced so as to lay them off or otherwise displace them from their jobs instead of the above-listed officers when such officers do not in fact have greater seniority in terms of length of employment.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Inmont Corporation, Automotive Division, OEM, that we have no objection to reinstating the affected unit employees who but for

the unlawful assignment of superseniority would not have been laid off or displaced from their jobs.

WE WILL jointly and severally with Inmont Corporation, Automotive Division, OEM, make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, with interest.

LOCAL 942, UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL IM-  
PLEMENT WORKERS OF AMERICA  
(UAW)

## DECISION

### STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge: Upon original charges filed by Joseph J. Belanger, an individual, in Cases 7-CA-20241 and 7-CB-5387, the Regional Director for Region 7 of the National Labor Relations Board (the Board) issued a consolidated complaint on March 2, 1982, which alleged inter alia, that Inmont Corporation, Automotive Division, OEM (the Respondent Employer),<sup>1</sup> and Local 942, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (the Respondent Union), violated Section 8(a)(3) and (1) and Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended (the Act), respectively, on or about January 25, 1982, by maintaining and giving effect to a superseniority provision for union officers contained in the collective-bargaining agreement between Respondent Employer and Respondent Union with the result that two of Respondent Union's trustees and its sergeant-at-arms were retained in active employment during an economic layoff while named employees with greater seniority were laid off from work.<sup>2</sup> The Respondent filed timely answers denying they had engaged in the unfair labor practices alleged.

The case was heard in Detroit, Michigan, on November 8, 1982.<sup>3</sup> On the entire record, including my observation of the witnesses when they gave testimony, and after due consideration of the briefs filed by the General Counsel and Respondent Union, I make the following

### I. JURISDICTION

At all times material herein, Respondent Employer has been engaged in the manufacture, sale, and distribution of automotive paints and related products. Its Milford

<sup>1</sup> The correct name of Respondent Employer as clarified at the hearing.

<sup>2</sup> The consolidated complaint was subsequently amended to add the name of a third trustee.

<sup>3</sup> At the commencement of the hearing, the General Counsel was permitted to amend the consolidated complaint as follows: "Union" was inserted after "Respondent" in par. 8; "Since" was inserted before "On or about" in par. 11; par. 1(c) beginning with the word "Maintaining" at the top of p. 4 was deleted; paragraph 2(b) starting with the word "void" on p. 4 was deleted; pars. 1(b) and 2(b) of the prayer for relief starting with the words "Maintaining" and "void," respectively, were deleted from the bottom of p. 4.

Avenue plant in Detroit, Michigan, is the only facility involved in this proceeding. During the calendar year 1981, Respondent Employer purchased and caused to be transported and delivered at its Milford Avenue plant from points located outside the State of Michigan paints, pigments, and other goods and materials valued in excess of \$50,000. Respondent Employer admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that Local 942, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

#### A. Background

Respondent Union has represented certain hourly paid production and maintenance employees employed by Respondent Employer since 1937. It represented approximately 194 employees at the time of the hearing herein.

Since at least 1950, successive collective-bargaining agreements executed by the parties have contained provisions which accord superseniority to union officers and stewards. Thus, article VII of the collective-bargaining agreement, which was entered on November 1, 1979, and expired on October 31, 1982, provided inter alia:<sup>4</sup>

Section 6. Shop Committeemen and Officers of Local No. 942, the total of both not to exceed thirteen (13) in number, provided they are employees of the Company, shall have plant-wide seniority (but not departmental or classification seniority) over all employees during their term of office for the purpose of the Layoff and Recall Procedure. In addition, each member of the Shop Committee and the Vice-President of Local No. 942 shall have day shift preference in any classification to which he might be assigned under the provisions of Article VII, Section 8, 9 or 10 during his term of office; and if he is not on the day shift, he shall displace the employee with the least seniority in his classification in his department on the day shift.

Section 7. Stewards shall have departmental seniority (but not classification seniority) over employees under their jurisdiction during their term of office for the purpose of the Layoff and Recall Procedure. Stewards shall not be transferred out of their department, division or shift on a temporary transfer basis; when the number of employees under the jurisdiction of a steward is reduced so that the Steward is not able to do the available work without training, this restriction on temporary transfer shall not apply.

James Randall, Respondent Union's president, indicated when called as an adverse witness by counsel for the

<sup>4</sup> See G.C. Exh. 2, p. 15.

General Counsel that the union officers who enjoyed superseniority pursuant to article VII, section 6, of the collective-bargaining agreement at all times material herein were: the president, vice president, recording secretary, financial secretary, sergeant-at-arms, guide, three trustees, and the chief steward on the night shift. He was unable to recall how many stewards enjoyed superseniority by virtue of article VVI, section 7, but indicated the number was between 10 and 20.<sup>5</sup>

The complaint in this case places in issue the legality of the grant of superseniority to three trustees and the sergeant-at-arms for Respondent Union. The record reveals that Respondent Employer experienced layoffs during the period of January 25 through March 14, 1982, in which the superseniority clause was invoked by the union trustees and the sergeant-at-arms. Specifically, employees Joseph Belanger, William Crawford, Ronald Klopfer, and Edward Litten were laid off during the following periods:

Joseph Belanger	Jan. 25 through Feb. 7, 1982
William Crawford	Jan. 25 through Mar. 14, 1982
Ronald Klopfer	Jan. 25 through Mar. 14, 1982
Edward Litten	Jan. 25 through Mar. 14, 1982

It was stipulated that but for the fact that the three trustees and sergeant-at-arms received preferential treatment due to the contractual clause quoted above, normal and/or real seniority would have caused trustees Richard Phillips, William Martin, Dennis Uzan and sergeant-at-arms Mark Howell to be laid off instead of Belanger, Crawford, Klopfer, and Litten.

#### B. The General Counsel's Case

The General Counsel contends that Respondent Union's trustees and its sergeant-at-arms cannot lawfully invoke article VII, section 6, of the collective-bargaining agreement to avoid layoff because they are not directly involved in the processing of grievances or in the administration of the contract.

Through Respondent Union President Randall it was shown that article XI, sections 12 and 13 of the International Union's constitution set forth the duties and functions of Respondent Union's three trustees and the sergeant-at-arms. The referenced sections provide:

##### Trustees

Section 12. The trustees shall have general supervision over all funds and property of the Local Union. They shall audit or cause to be audited by a Certified Public Accountant selected by the Local Union Executive Board, the records of the Finan-

cial Officers of the Local Union semiannually as provided herein, using duplicate forms provided by the International Union, a copy of which shall be forwarded to the International Secretary-Treasurer immediately thereafter. It shall also be their duty to see that the Financial Officers of the Local Union are bonded in conformity with the laws of the International Union. The Trustees shall see that all funds shall be deposited in a bank subject to an order signed by the President and Treasurer and/or Financial Secretary. In Local Unions where safety deposit boxes are used, the Trustees shall see that the signatures of the President, Treasurer and one (1) of the Trustees are required before admittance to the safety deposit box is permitted. In the event the books are not received for audit within fifteen (15) days after the end of each six-month period, the Chairperson of the Trustees shall make a report to the next meeting of the Local Union for action.

##### Sergeant-at-Arms

Section 13. It shall be the duty of the Sergeant-at-Arms to introduce all new members and visitors and assist the President in preserving order when called upon to do so. S/He shall also take charge of all property of the Local Union not otherwise provided for, and perform such other duties as may be assigned to her/him from time to time.

Randall indicated during his testimony that, in addition to performing the above-described duties and functions, Respondent Union's trustees and sergeant-at-arms serve on the Local Union's executive board. The International Union's constitution and Respondent Union's bylaws indicate that executive boards of the Local Unions are empowered to represent the Local between membership meetings, although they may not transact business which may affect the vital interests of the membership until the approval of the membership is secured. In general, the Local Union executive boards are charged with the responsibility to carry out the provisions of the International constitution, and the official policies of both the International and the Local(s).<sup>6</sup> With specific regard to Respondent Union's executive board,<sup>7</sup> Randall testified it meets 1 hour before the regularly scheduled membership meeting each month to discuss the agenda for the membership meeting, and it meets twice a month in a so-called committee room located on Respondent Employer's property to vote on other than day-to-day financial matters. While Randall testified the executive board does not meet directly with members of Respondent Employer to discuss grievances and contract matters, he indicated that members of the Board distribute and collect "speak up" slips from members to ascertain their views on possible contract demands; are consulted by bargaining unit personnel concerning contractual matters; decide

<sup>5</sup> The parties stipulated, and I find, that Randall; trustees Richard Phillips, Bill Martin, and Dennis Uzan; and sergeant-at-arms Mark Howell were, and are, agents of Respondent Union within the meaning of Sec. 2(13) of the Act. In addition, all parties stipulated, and I find, that at all times material Charles Wheeler, Respondent Employer's industrial relations manager, has been a supervisor and an agent of Respondent Employer within the meaning of Sec. 2(11) and (13) of the Act.

<sup>6</sup> See G.C. Exhs. 4 (p. 79) and 5 (pp. 9-11).

<sup>7</sup> Respondent Union's executive board is composed of the president, vice president, three bargaining committeemen, financial secretary, recording secretary, three trustees, sergeant-at-arms, and the midnight chief steward.

when grievances reach the fourth step whether they will be taken to arbitration; keep members informed concerning arbitration proceedings; act as picket captains in the event of a strike; are obligated to get members back to work in event of a wildcat strike; and vote whether to expel board members or stewards who miss two meetings in a row without an adequate excuse. In addition, Randall indicated that as all safety and health and discharge grievances are filed at the fourth step with the bargaining committee, the board holds meetings to decide whether to file a grievance immediately or to try to resolve the problem with the safety director or appropriate management representative.

In support of the claim that Respondent Union's trustees, its sergeant-at-arms, and its executive board members have no direct roles in the processing of grievances or in contract matters, the General Counsel caused Respondent Employer's manager of industrial relations, Charles Wheeler, to testify that he had never dealt with the trustees, the sergeant-at-arms, or the executive board concerning grievances or contract issues. When called as a witness by the General Counsel, trustee William Martin admitted he has never met directly with Respondent Employer on the processing of a grievance to bargain for contractual provisions or to discuss a contractual problem.

The General Counsel's last witness, Charging Party Belanger, testified that he observed Respondent Union's executive board meetings, which preceded regular membership meetings, on four to five occasions during the year preceding the hearing and he noted that the trustees and the sergeant-at-arms did not participate in the meeting.

### *C. Respondent Union's Evidence*

While Respondent Union concedes its trustees and the sergeant-at-arms have little, if any, direct contact with Respondent Employer representatives concerning grievance or contract matters, it contends that such officers, individually, and as members of the executive board, are extensively involved in the grievance process and in administration of the collective-bargaining agreement and the operation of the Local.

Through its recording secretary, Wyndham Howell Sr., Respondent Union elicited testimony which reveals that stewards and bargaining committee members are elected each year, while elections for officers, including the trustees and the sergeant-at-arms, are held once every 3 years.

While Howell was on the witness stand, Respondent Union placed several documents in evidence to demonstrate the manner in which its officers, stewards, and committeepersons are elected. Apparently, the listings of candidates nominated are posted throughout the plant, prior to the final election, and the members of the bargaining unit are able, if they desire to do so, to compare the names of those nominated with seniority lists posted in the plant and thereby ascertain whether the individual nominees would gain, if elected, a seniority preference or benefit as a result of occupying a position which conferred superseniority in accordance with article VII, sections 6 and 7, of the collective-bargaining agreement.

To further explain the duties of the trustees and the sergeant-at-arms, Respondent Union introduced Respondent's Exhibit 1, through witness Randall, and Respondent's Exhibit 2, through Howell. As explained by Randall, the former exhibit consists of some eight pages of notes taken by Randall to summarize topics discussed at executive board and/or regular membership meetings held in a rented hall off Respondent Employer's premises during the period extending from November 1, 1981, to October 3, 1982.<sup>8</sup> With specific regard to grievance or contract related matters, Respondent's Exhibit 1 reveals, *inter alia*, that the status of various arbitration proceedings was discussed at most executive board and membership meetings; that the status of unfair labor practice charges involving superseniority was discussed at several executive board and/or membership meetings; that unspecified discussion concerning the discharge of an employee (Danny Robinson) occurred during the March 7, 1982, executive board and membership meetings; that the fourth step grievances concerning warehouse jobs and smoke breaks were discussed at several meetings; that the fourth step grievances of three employees (Hernandez, Biando, and Hluschenko) were mentioned at the June 6 meetings; that members were told to give their suggestions for upcoming negotiations to any committee members at the June 6, 1982, membership meeting; and that the progress of negotiations and discussion of a strike voted occurred at the October 3, 1982, meeting.<sup>9</sup> Respondent's Exhibit 2 is a compilation consisting of notices of executive board meetings for February 8, 9, and 16, 1982, held in a committee room located on Respondent Employer's premises together with minutes of such meetings prepared by recording secretary Howell. This exhibit indicates, *inter alia*, that the trustees and the sergeant-at-arms attended the meetings which were held in the committee room at the plant; the removal of union steward Barbara Scruggs was discussed at the February 8 and 9 meetings; and that possible reopening of the contract was discussed and voted upon at the February 16 meetings.

During his appearance as a witness, trustee Richard Phillips indicated he was elected as a trustee in 1979. In describing his duties and functions as a trustee, he indicated he spends approximately 6 hours every 6 months auditing the financial transactions of the Local during the preceding 6-month period, following the procedures outlined in a manual provided to Respondent Union by the International Union.

With regard to duties and functions which might loosely be classified as steward-like functions, Phillips indicated that because of his close contact with the members of the bargaining committee, he and other members of the executive board are familiar with the terms of the collective-bargaining agreement and, as the stewards and unit employees are cognizant of that fact, they frequently

<sup>8</sup> The record reveals that Respondent Union normally conducts no regular membership meetings during the months of July, August, and September. The executive board continues to meet at the plant during such months.

<sup>9</sup> The noted items were simply mentioned; the minutes do not reveal the details of discussion.



ask his opinion on how to handle grievances or his interpretation of contract clauses. He testified he is asked to give his opinions on such matters more frequently when the bargaining committee is actively engaged in negotiations. Like other Respondent Union witnesses, Phillips verified the fact that the executive board votes to determine whether grievances which have reached the fourth step will be taken to arbitration,<sup>10</sup> and he indicated the executive board votes on whether contract proposals will be submitted to the membership for ratification. Finally, Phillips testified he attends meetings which are held in the committee room on Respondent Employer's premises when safety and health matters arise and the executive board must decide whether a grievance should be filed or the matter should be taken up with management without the filing of a grievance.<sup>11</sup>

Mark Howell indicated his duties as sergeant-at-arms are set forth in the Local Union's bylaws. In addition, he testified he keeps a list of the property of the Local, and checks from time to time to ascertain its condition and whether they still have the listed items.

Howell indicated he is a member of the executive board and is entitled to one vote like other members of the Board. He testified he attends both the meetings of the executive board which are held 1 hour before each regular monthly membership meeting; and he attends the semimonthly and special meetings of the Board which are held in the committee room at the plant.

Like trustee Phillips, Howell testified employees come up to him in the plant and ask questions concerning contract language and questions about how their grievances are progressing or being handled.

Howell indicated he has substituted for members of the election committee, and that he is a member of the supplemental unemployment committee (SUB),<sup>12</sup> the reaction committee, and the retiree committee.

The International Union's chief auditor and director of the auditing department, Rayburn Frye, testified as to the importance of the duties of the trustees. In brief, it was Frye's testimony that the trustees were relied on by the Unions as an important part of the checks and balances necessary to ensure the maintenance of the Union's reputation for honesty and integrity.

#### D. Contention of the Parties

The General Counsel's contention in this case is that Respondent Union and Respondent Employer violated

Section 8(b)(1)(A) and (2) and Section 8(a)(3) and (1) of the Act, respectively, by applying and enforcing article VII, section 6, of their collective-bargaining agreement on or about January 25, 1982, as such application of a preferred seniority clause enabled three union trustees and a union sergeant-at-arms to retain their jobs while other employees with greater natural seniority were not so retained.<sup>13</sup> The General Counsel argues that the trustees and the sergeant-at-arms are not lawfully entitled to superseniority because the duties officially assigned or regularly performed by the trustees and the sergeant-at-arms are not steward-type functions, are not performed at the workplace during hours of employment, and do not relate to the general furthering of the relationship between the Respondents.

Respondent Union and Respondent Employer contend initially that as article VII, section 6, has appeared in their contracts since at least 1950, and the clause has been enforced at times in the past, Section 10(b) of the Act should preclude the Board from finding they violated the Act in this case. They further argue that the trustees and the sergeant-at-arms perform duties necessary to further the negotiation and administration of the collective-bargaining agreement at the plant level and, for that reason, they are lawfully entitled to preferred seniority. Respondent Union further argues that the Board's decision in *Dairyalea Cooperative*, 219 NLRB 656 (1975), enf. sub nom. *Teamsters Local 338 v. NLRB*, 531 F.2d 1162 (2d Cir. 1976) (hereinafter *Dairyalea*), is based on an inference that superseniority benefits in that case (superseniority for all purposes) tended to encourage union activity and was intended to do so, whereas the facts of the instant case will not support such an inference because superseniority is limited to layoff and recall and the union officers who are entitled to invoke superseniority are duly elected by the employees. Finally, the Union argues that the superseniority issues should be considered and their legality determined using the concept of the duty of fair representation. Thus, the Union contends that the Board has applied the principle of duty fair representation to determine violations in other cases involving seniority such as *Red Ball Motor Freight*, 157 NLRB 1237 (1966), enf. 379 F.2d 137 (D.C. Cir. 1967), which involved the dovetailing of seniority resulting from mergers. In application of the principle of the duty to fairly represent, the union is entitled, the argument goes, to a "wide range of reasonableness," in meeting the needs of those it represents so long as it acts in good faith and with honesty of purpose. *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The Union asserts that measured under the duty to fairly represent standard, the superseniority clause involved herein cannot be found unlawful. This assertion would appear to be based in part upon the premise that the reasonableness of the seniority provision in issue had been shown by the ratification by employees

<sup>10</sup> The record reveals the executive board considers from 5 to 24 fourth-step grievances per month.

<sup>11</sup> Phillips testified he has a number of duties which do not meet the definition of steward-like duties or functions. Thus, he indicated: The trustees, as officers of the Local, have an obligation to attempt to cause employees to return to work in event of a wildcat strike; that the trustees act as picket captains if a lawful strike occurs; that he substituted for a member of the election committee when an internal election was held by the Local; and he serves as director of education and in this capacity gives copies of the contract to new employees and explains to them the workings of the Union, including why they pay dues.

<sup>12</sup> Depending on the amount of money available, Respondent Employer pays supplemental unemployment benefits to its employees who are in layoff status. While application for such moneys are made in Respondent Employer's personnel office, Howell indicated employees ask union officers questions about the fund, such as whether money is available or when it will be available.

<sup>13</sup> While the General Counsel alleged that the Respondents violated the described sections of the Act by "maintaining" the preferred seniority clause in question, counsels for the General Counsel indicated at the outset of the hearing that they seek no remedial order which would prohibit maintenance or cause voiding of the clause.

of the provision in the collective-bargaining agreement for over 30 years, and through the election of the union officers to whom the provision applies every 3 years.

### E. Analysis and Conclusions

With respect to the 10(b) argument, support for the Respondent's position can be found in *NLRB v. Auto Warehouse, Inc.*, 571 F.2d 860, 963 (5th Cir. 1978), which is cited in the Union's brief along with *Machinists Local 1424 v. NLRB*, 362 U.S. 411 (1960). In *Auto Warehouse*, the court refused to enforce on 10(b) grounds a Board finding at 227 NLRB 628 that an employer and a union violated the Act by maintaining and enforcing a superseniority provision in their collective-bargaining agreement which granted superseniority to union stewards for "all purposes," including job bidding. While the execution of the collective-bargaining agreement had occurred outside the 10(b) period, the steward in that case had exercised his superseniority on a job bid within the 6-month period of limitations making the charge timely under Section 10(b). The court, however, held that the superseniority clause was not per se unlawful, and only presumptively unlawful, so that an inquiry into its legality depended on justification for the clause at the time of its execution. The court relied largely on *Machinists Local 1424*, supra, where the Supreme Court had rejected as time barred a challenge to a collective-bargaining agreement containing a union-security provision executed with a minority union outside the 10(b) period.

The Board has not followed the reasoning of the court in *Auto Warehouse*. See, e.g., *Actors' Equity Assn.*, 247 NLRB 1193 (1980), enf'd. 644 F.2d 939 (2d Cir. 1981). The Board has consistently held that the maintenance of a presumptively invalid superseniority clause is unlawful, and such maintenance and enforcement within the 6-month period prior to the filing of the charge is sufficient to defeat a defense based on 10(b). See *Connecticut Limousine Service*, 235 NLRB 1350 (1978), enf'd. in part sub nom. *NLRB v. Teamsters Local 443*, 600 F.2d 411 (2d Cir. 1979); *Preston Trucking Co.*, 236 NLRB 464 (1978); *Perfection Automotive Products*, 232 NLRB 690 (1977); *A.P.A. Transport Corp.*, supra at 1409, "Mere longevity of contractual language does not establish its legality." And as the Second Circuit commented in *Actors' Equity*, supra at 943, with regard to the restrictive interpretation of Section 10(b) sought by the respondent in that case:

[Such a] reading of § 10(b) would mean that no union member could challenge the validity of an existing [disparate dues schedule utilized in connection with a union-security clause] where the practice had existed for more than 6 months prior to the filing of the charges. We decline to adopt such a preclusive rule.

Here, the trustees and the sergeant-at-arms utilized article VII, section 6, of the then subsisting collective-bargaining agreement on January 25, 1982, to retain their job causing Respondent Employer to lay off on that date employees Belanger, Crawford, Klopfer, and Litten who had more natural seniority than trustees Richard Phillips, Dennis Uzan, and Bill Martin and sergeant-at-arms Mark

Howell. Anticipating such action, employee Belanger filed the original charge in this case on January 22, 1982. I find the charge was timely filed and the 10(b) contention is without merit.

Turning to the merits of the case, the principles which control the resolution of the major issue in this case have their originals in *Dairylea Cooperative*, supra. In *Dairylea*, the Board concluded that steward superseniority provisions limited to layoff and recall situations are presumptively valid but superseniority provisions as to other job benefits are presumptively invalid, stating that steward superseniority

... furthers the effective administration of bargaining agreements on the plant level by encouraging the continued presence of the steward on the job. It thereby not only serves a legitimate statutory purpose but also redounds in its effect to the benefits of all unit employees. Thus, superseniority for layoff and recall has a proper aim and such discrimination as it may create is simply an incidental side effect of a more general benefit accorded all employees. [219 NLRB at 658.]

Subsequently, in *Limpco Mfg. Co.*,<sup>14</sup> the Board considered whether superseniority for purposes of layoff could be extended to a recording secretary who performed internal union correspondence tasks and also participated informally in processing grievances, advising stewards and foremen on contract interpretation, and handled problems in general. The Board majority concluded that facilitating the effective administration of a collective-bargaining agreement extended beyond grievance processing to ensure "at the very least a functioning local to assert the presence of the union on the job" (230 NLRB 408). It further concluded that upon a showing that the official responsibilities of the union officer "bear a direct relationship to the effective and efficient representation of unit employees" (230 NLRB at 408), then the officer is entitled to the benefits of the same presumption afforded to union stewards.

Recently, in *Gulton Electro-Voice, Inc.*, 266 NLRB 406 (1983), the Board considered whether it would continue to find lawful superseniority contract clauses which grant superseniority for layoff and recall to union officers who do not perform steward or steward-like functions, i.e., grievance processing or other on-the-job contract administration responsibilities. The Board resolved the issue stating (266 NLRB at 409):

We will find unlawful those grants of superseniority extending beyond those employees responsible for grievance processing and on-the-job contract administration. We will find lawful only those superseniority provisions limited to employees who, as agents of the union, must be on the job to accomplish their duties directly related to administering the collective-bargaining agreement.

<sup>14</sup> *Electrical Workers Local 623 (Limpco Mfg.)*, 230 NLRB 406 (1977), enf'd. sub nom. *D'Amico v. NLRB*, 582 F.2d 820 (3d Cir. 1978).

Significantly, in *Gulton Electro-Voice*, the Board noted (at fn. 9, 408):

In rejecting the *Limpco* standard, we do not necessarily suggest that the superseniority accorded the *Limpco* recording secretary would be unlawful under the standard set forth herein, as she did perform some grievance functions. Rather, we do not speculate as to how we would decide those facts under the test enunciated in this case.

The foregoing indicates I must decide whether the three trustees and the sergeant-at-arms involved in the case sub judice are responsible for grievance processing and on-the-job contract administration and whether they must be on the job to accomplish duties directly related to administering the collective-bargaining agreement.

At the outset, it is clear, and I find, that performance of the duties and functions enunciated for the trustees and the sergeant-at-arms in the International Union's constitution and Respondent Union's bylaws would not justify a lawful grant of superseniority to the individuals occupying those offices.<sup>15</sup> Thus, justification for according them preferred plantwide seniority for layoff and recall purposes must be found, if at all, because of their informal participation in the processing of grievances and administration of the contract, and through their participation, on plant property, in executive board activities.

In sum, the instant record reveals that Respondent Union's trustees and its sergeant-at-arms, individually, or as members of the executive board, engage in the following "in plant" activities: distribute and collect "speak up" slips in the solicitation of membership suggestions for

contract proposals; render informal opinions on matters involving contract interpretation; meet twice each month and, on other occasions when the need arises, in a committee office located in the plant, to discuss and resolve problems arising within the plant, including employee discharges, safety matters, and situations necessitating the removal of stewards; fill in for bargaining committee members when they are out of the plant conducting negotiations, and decide by executive board vote whether to recommend that the membership ratify or reject final contract proposals. During the months of July, August, and September, the executive board conducts all the business at meetings held in the plant.

In my view, it is clear, and I find, that Respondent Union's trustees and its sergeant-at-arms engaged in significant in-plant activities which are directly related to the processing of grievances and to the administration of the collective-bargaining agreement. As the vast majority of its meetings are held in the plant, it is clear its members must be on the job to participate. Consequently, I find that Respondent Union and Respondent Employer did not violate the Act by according the trustees and the sergeant-at-arms superseniority on or about January 25, 1982, as alleged.<sup>16</sup>

[Recommended Order for dismissal omitted from publication.]

<sup>15</sup> *McQuay Norris, Inc.*, 258 NLRB 1397 (1981).

<sup>16</sup> Having found in Respondent Union's favor, I refrain from treating at length its contention that the facts in this case reveal that art. VII, sec. 6, of the contract does not, and was not intended to, encourage union activity and its contention that the Board should utilize the principle of fair representation to determine the instant superseniority issue. I note, however, that the Board considered and rejected the first issue in *Gulton Electro-Voice, Inc.*, supra, and I observe that I am obligated to utilize the standard set forth by the Board in *Gulton Electro-Voice* to resolve the issues in this case.